

STATE OF MICHIGAN
COURT OF APPEALS

HUGH O'CONNER, JANET O'CONNER,
PATRICIA PULLIN, BOB OWENS, HELEN
WLASIUK, MAUREEN RATLIFF, CHRIS
COURY, SIMONA FARRIS, FRANCES
KACHMAN, JANICE J. QUICK, VIRGINIA H.
GWIZDOWSKI, MARTIN FENTER, DERREL
SCHUURMAN and JOANNE M. LUCIA,

Plaintiffs,

v

CITY OF ST. CLAIR SHORES and JOHN DOE,

Defendants/Cross Plaintiffs-
Appellees,

and

LAKESHORE VILLAGE CONDOMINIUM
ASSOCIATION,

Defendant/Cross Defendant-
Appellant.

UNPUBLISHED
March 18, 2003

No. 236928
Macomb Circuit Court
LC No. 98-000088-CZ

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Defendant Lakeshore appeals as of right from a circuit court order granting the city's motion for summary disposition and dismissing Lakeshore's cross claim. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs are Lakeshore residents. On various occasions, they suffered property damage due to sewer backups. They alleged that Lakeshore, the city, or both owned and controlled the sewer system and claimed the city was liable for trespass-nuisance. Both Lakeshore and the city asserted that the other owned and controlled the sewer system and filed cross claims for contribution and/or indemnification. The trial court ruled that the city did not have control over the system and dismissed Lakeshore's cross claim.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions, and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

The evidence clearly showed that Lakeshore owned and maintained the sewer system as evidenced by the fact that it attempted to dedicate the system to the city. There is no evidence that the system is connected to the city's sewer system. The Lakeshore sewer system served the condominium complex and neighboring properties, all of which were once owned by the person who had the system installed. Those neighboring properties include both a shopping center and individual homes. The fact that the city may have approved site plans which called for those properties to tap into Lakeshore's sewer system is insufficient to establish the control necessary to impose liability for trespass-nuisance. *Kuriakuz v West Bloomfield Twp*, 196 Mich App 175, 177; 492 NW2d 757 (1992).

Affirmed.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage